

## Chapter 8.12

### CHILD CARE FACILITIES

#### Sections:

8.12.010	Definitions.
8.12.020	Permit Required.
8.12.030	Application for Permit; Process; Requirements.
8.12.040	Issuance of Permit; Conditions.
8.12.050	Denial of Application; Appeals.
8.12.060	Revocation or Suspension of Permit; Notice.
8.12.070	Term of Permit; Nontransferable.
8.12.080	Permit to be Posted.
8.12.090	Permittee and Employees; Certificate Required.
8.12.095	Substitute List; Information Required.
8.12.100	Operation of Facility; Rules and Regulations.
8.12.110	Entry for Inspection.
8.12.115	Facility Open to Visits; Notice to Parents Required.
8.12.120	Penalty for Violations.

#### 8.12.010 Definitions.

For the purpose of this chapter the following words shall have the following meanings:

**Person** as used herein shall include the plural thereof, and shall mean any individual, group, society, association, partnership, or corporation.

**Child care facility** shall mean any place, home, or institution where two or three children from more than one family under the age of twelve years, are received and cared for during some portion of the day or night for payment or consideration, and where such children do not have their place of abode and are not related to the owner or operator of said place by blood, marriage, or adoption. Such term shall include, but not be limited to, day care homes. Such term shall not include care provided on an irregular basis.

**Director** shall mean the duly appointed acting and qualified Health Director of the City-County Health Department or any assistants or inspectors duly appointed by the Director. (Ord. 15553 §1; May 14, 1990: P.C. §5.44.010: Ord. 13961 §1; September 17, 1984: prior Ord. 12958 §1; July 21, 1980: Ord. 3912 §1; February 23, 1943).

#### 8.12.020 Permit Required.

It shall be unlawful for any person to establish, operate, or maintain a child care facility without first having procured a permit so to do from the Director. (Ord. 15553 §2; May 14, 1990: P.C. §5.44.020: Ord. 12958 §2; July 21, 1980: prior Ord. 3912 §2; February 23, 1943).

#### **8.12.030 Application for Permit; Process; Requirements.**

An application to operate a child care facility shall be filed with the Director in writing upon forms provided for that purpose by the city. The Director shall not issue a permit until such an application, together with the following information and materials, is on file:

- (a) Name and address of the applicant;
- (b) Location of premises to be licensed;
- (c) Name of manager or person to be in direct charge of the child care facility;
- (d) Maximum number of children to be accommodated in such facility.
- (e) A sketch, diagram, or print of the child care facility showing the arrangement of rooms to be used by the children, including dimensions, and the outdoor play area, including dimensions;
- (f) The names, addresses, and telephone numbers of three non-related references and permission to contact them.
- (g) A written statement providing information concerning any felony or misdemeanor arrests and convictions or any pending criminal charges including criminal history information on cases or incidents involving police reports with or without court disposition relating to: (1) the applicant; (2) the applicant's spouse; (3) any other person, related or not, who lives or resides on the premises where the day care facility is located; and (4) any other person, related or not, who will be present on the premises where the day care facility is located during any hours of operation of the child care facility.
- (h) A written statement providing that the applicant shall not knowingly allow any person, whether paid or as a volunteer, who has been convicted of, admitted to, or against whom there is substantial evidence of crimes involving intentional bodily harm to another person, crimes against children, crimes involving the illegal use of a controlled substance within the last seven years, or crimes involving moral turpitude to be upon the child care facility premises during any hours of operation of the child care facility. The statement shall also provide that the applicant shall not knowingly allow any person, whether paid or as a volunteer, who has engaged in or who has a history of behavior injurious to or which may endanger the health or morals of the children in care to be upon the child care facility premises during any hours of operation of the child care facility.
- (i) A health information report on a form furnished by the city indicating that the applicant has no physical condition which will adversely affect the applicant's ability to provide child care services.
- (j) A list of all substitute teachers, instructors, or employees who may be utilized by the applicant.

The applicant shall certify in writing that all matters submitted as part of the application are complete, current and true, and shall include a notarized written authorization for review of pertinent law enforcement material relating to arrests or convictions as well as criminal history information relating to cases or incidents for which no court disposition was made. This authorization shall cover: (1) the applicant; (2) the applicant's spouse; (3) any other person, related or not, who lives or resides on the premises where the day care facility is located; and (4) any other person, related or not, who will be regularly present on the premises where the child care facility is located during any hours of operation of the child care facility. All such material and information reviewed shall be kept strictly confidential and shall be reviewed solely for enforcement of the provisions of this chapter. (Ord. 15850 §1; March 25, 1991: prior Ord. 15553 §3; May 14, 1990: P.C. §5.44.030: Ord. 12958 §3; July 21, 1980: Ord. 3912 §3; February 23, 1943).

#### **8.12.040 Issuance of Permit; Conditions.**

(a) Before a permit for any child care facility is issued, the director shall investigate the application and determine whether or not said premises and the person to operate same conform to all the requirements of this chapter, the rules and regulations adopted hereunder, all ordinances of the City of Lincoln, and the laws of the State of Nebraska.

(b) The Chief of Police or designated representative shall file a written report with the director indicating that the review of pertinent law enforcement material as provided in Section 8.12.030 has been completed for each person for whom the applicant has submitted an appropriate authorization for such review. The report shall indicate any such person who has been convicted of, admitted to, or against whom there is substantial evidence of crime involving intentional bodily harm to another person, crimes against children, crimes involving illegal use of a controlled substance within the last seven years, or crimes involving moral turpitude by noting the date and type of such offense in the written report to the director.

(c) The director shall not issue a permit to any applicant who has been convicted of, who has admitted to, or against whom there is substantial evidence of, crimes involving intentional bodily harm to another person, crimes against children, crimes involving the illegal use of a controlled substance within the last seven years, or crimes involving moral turpitude. (Ord. 15850 §2; March 25, 1991: prior Ord. 15553 §4; May 14, 1990: P.C. §5.44.040: Ord. 14988 §1; September 19, 1988: Ord. 13261 §1; November 16, 1981: Ord. 12958 §4; July 21, 1980: Ord. 3912 §4; February 23, 1943).

#### **8.12.050 Denial of Application; Appeals.**

(a) Should the director deny any application or fail or refuse to issue a permit for a child care facility within forty-five days from the date of application, such decision may be appealed to district court as provided by state law. (Ord. 15850 §3; March 25, 1991: prior Ord. 15553 §5; May 14, 1990: P.C. §5.44.045: Ord. 14988 §2; September 19, 1988).

#### **8.12.060 Revocation or Suspension of Permit; Notice.**

Any permit granted hereunder shall be subject to revocation or suspension in the following manner:

(a) The director shall notify the person holding said permit, setting forth wherein permittee has failed to comply with this chapter and citing them to appear before the director at a day and hour therein specified, which shall be not less than three but not more than fifteen days after the notice provided herein. Such notice shall order the permittee to show cause, if any, why said permit should not be revoked or suspended. The hearing need not be conducted according to the technical rules relating to evidence and witnesses.

(b) The applicant and the director may:

- (1) Call and examine witnesses on any matter relevant to the issues of the hearing;
- (2) Introduce documentary and physical evidence;
- (3) Cross examine opposing witnesses on any matter relevant to the issues of the hearing; and
- (4) Rebut evidence.

(c) If the director determines that a violation of this chapter has occurred, the director may order the permit revoked or suspended permanently or for an appropriate period of time not to exceed thirty days, or may order such other action against the permittee as the director may determine proper. Such decision shall be final and binding upon the city and upon the licensee, and such decision may be appealed

to district court as provided by state law. (Ord. 15850 §4; March 25, 1991: prior Ord. 15553 §6; May 14, 1990: P.C. §5.44.060: Ord. 14988 §4; September 19, 1988: Ord. 12958 §6; July 21, 1980: Ord. 3912 §6; February 23, 1943).

#### **8.12.070 Term of Permit; Nontransferable.**

All permits initially granted under this chapter prior to April 7, 1981, shall continue to expire on the thirty-first day of May following date of issuance and each year thereafter, unless sooner revoked. Permits granted on or after April 7, 1981, shall expire one year following date of issuance, unless sooner revoked. No permit shall be assignable or transferable as to permittee. Permits may be transferred to new locations upon application, inspection, and approval as provided by this chapter for the original permitted premises. (Ord. 15657 §2; July 9, 1990: prior Ord. 15553 §7; May 14, 1990: P.C. §5.44.070: Ord. 13112 §1; March 31, 1981: Ord. 12958 §7; July 21, 1980: Ord. 3912 §7; as amended by Ord. 7393, February 23, 1961).

#### **8.12.080 Permit to be Posted.**

It shall be unlawful for any person to operate and maintain any such home unless there be at all times posted in a conspicuous place at such home the permit issued therefor in accordance with the provisions of this chapter. (Ord. 15553 §8; May 14, 1990: P.C. §5.44.080: Ord. 3912 §8; February 23, 1943).

#### **8.12.090 Permittee and Employees; Certificate Required.**

It shall be unlawful for any permittee to operate or to employ any person in the operation of any such child care facility until and unless such person shall have furnished to the director a health information report upon a form furnished by the city indicating that such person has no physical condition which will adversely affect the individual's ability to care for and be in contact with children. Every such operator or person employed in the operation of any such home shall furnish such report once each year, and at such other times as the director may require. If any such person is found by the director to not have the ability to care for and be in contact with children, such person shall not be employed in connection with such facility, and if he or she be the permittee of such facility, the permit shall be forthwith cancelled and revoked without notice of hearing notwithstanding the provisions of Section 8.12.060 hereof. Any person who shall refuse to furnish such information report shall not be employed in or about such facility. (Ord. 15553 §9; May 14, 1990: P.C. §5.44.090: Ord. 13261 §2; November 16, 1981: Ord. 12958 §8; July 21, 1980: Ord. 3912 §9; February 23, 1943).

#### **8.12.095 Substitute List; Information Required.**

A permittee shall maintain a current list of all substitute teachers, instructors, or employees who may be utilized by the applicant. For any person included on the list, a permittee shall provide and keep current records which shall include, but not be limited to:

- (a) The name, address, and telephone number of each substitute;
- (b) The qualifications of all substitutes. (Ord. 15850 §5; March 25, 1991).

**8.12.100      Operation of Facility; Rules and Regulations.**

The director may from time to time promulgate such rules and regulations as deemed necessary for the operation of such child care facility; provided, such rules and regulations shall not be effective until approved by resolution of the City Council after report and recommendation of the Board of Health. (Ord. 15553 §10; May 14, 1990: P.C. §5.44.100: Ord. 14988 §5; September 19, 1988: Ord. 12958 §99; July 21, 1980: Ord. 3912 §10; February 23, 1943).

**8.12.110      Entry for Inspection.**

The director shall have the right and is hereby empowered to enter upon the premises of any such child care facility to inspect the same and all accommodations and facilities connected therewith. (Ord. 15553 §11; May 14, 1990: P.C. §5.44.110: Ord. 13961 §3; September 17, 1984: Ord. 3912 §11; February 23, 1943).

**8.12.115.      Facility Open to Visits; Notice to Parents Required.**

A permittee shall be required to notify all parents or guardians that the child care facility is open to visits by parents or guardians of the children enrolled during the hours of operation. (Ord. 15850 §6; March 25, 1991).

**8.12.120      Penalty for Violations.**

Any person upon whom a duty is placed by the provisions of this chapter who shall fail, neglect, or refuse to perform such duty or who shall violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not to exceed \$100.00. Each day that a violation of this chapter continues shall constitute a separate and distinct offense and shall be punishable as such. (Ord. 15553 §12; May 14, 1990: P.C. §5.44.130: Ord. 3912 §13; February 23, 1943).